

**TESTIMONY OF CLARK KENT ERVIN BEFORE THE HOUSE COMMITTEE
ON GOVERNMENT REFORM ON THE SUBJECT OF ACQUISITION
REFORM AT THE DEPARTMENT OF HOMELAND SECURITY, JULY 27, 2006**

Thank you, Mr. Chairman and Mr. Ranking Member, for inviting me to testify today on the state of contracting at the Department of Homeland Security. Though the department is only three years old, it has firmly established a reputation as one of the more dysfunctional agencies in government, and this is especially true in the area of procurement. This is not just a matter of wasting precious taxpayer dollars, as bad as that is, especially now at time of significant budgetary challenges. It also constitutes a gap in our security that terrorists can exploit to kill Americans and harm our economy, because every dollar wasted on a flawed contract or flawed contracting process is a dollar that could have been spent to make our nation more secure.

If this is the bad news, the good news is that lessons can be learned from the last three years. These lessons translate into several commonsensical principles, as follows.

First, the lesson to take away from FEMA's disastrous contracting performance during Katrina, and from the TSA's \$19 million contract to set up an elaborate operations center, is that *all* contracts should be competed, even when the dollar amount is under the legal threshold, to ensure that the best possible value is obtained for the American people. In the past, "emergencies" have been used to justify no-bid contracts, but emergencies, especially at a Department of Homeland Security, should be anticipated and planned for in advance by putting in place competitively bid contingency contracts so that the department is not forced to do in extremis what it would not willingly do under normal circumstances.

Second, one lesson to take away from Boeing's \$1.2 billion contract to install and maintain explosive detection systems at airports is that under no circumstances should the department allow contracts to become de facto illegal "cost plus percentage of cost" contracts. Such contracts are illegal for a good reason - because the higher the contract's cost the greater the contractors' profit there is no incentive for contractors to economize and every incentive for them to overcharge.

Third, another lesson to take away from that contract is that when the bulk of the work under a contract is to be done not by the prime contractor, but by subcontractors, the department should save money by cutting out the middleman and contracting directly with the subcontractors.

Fourth, the lesson to take away from the \$1 billion Unisys contract to supply TSA with an IT system is that under no circumstances should a contractor be allowed to define contract requirements. If we leave it up to contractors to determine what government agencies need, chances are high that the contractors will decide that the agencies need more expensive things than they actually do.

Fifth, under no circumstances should contractors in the business of providing the very goods and services at issue oversee the work of fellow contractors.

Sixth, one of the lessons to take away from the contract to provide limousine services to DHS personnel that has been linked to the Duke Cunningham congressional bribery case is that background checks should be required not only on those of the contractor's employees who are to provide services under the contract but also on the contractor's officers, directors, and major shareholders.

Seventh, penalties should be built in contracts for failure to perform and tardiness, and bonuses, performance awards, and other incentives should be paid only when earned.

In addition to the foregoing, the number of procurement officers in the department should be significantly higher than it presently is. And, it's not just a question of throwing more bodies at the problem; the people hired should have years of government contracting experience. Otherwise, there will simply be more DHS procurement officials for more experienced private sector procurement experts to take advantage of.

Further, part of the problem with procurement is that the department's "Chief" Procurement Officer" does not have the authority that her title implies. The CPO should be given the power to hire, fire, and otherwise direct the work of the component procurement heads; otherwise, components will continue to make discrete purchases that are not in the overall interest of the department. This has been a problem since day one, not only with regard to the Chief Procurement Officer, but also with regard to the Chief Financial Officer and the Chief Information Officer. Secretary Ridge was never willing to fix the problem, and despite a "second stage review" that promised to fix problems like this one, Secretary Chertoff has likewise failed to address it.

Moreover, I suggest investigating the degree to which DHS, relative to other agencies its size, relies on contractors to perform its core functions. (This suggestion was prompted by my surprise recently when, to request that a department official attend a meeting I had to make the request through a contractor who keeps his schedule.)

Finally, it is critical that the department's Office of Inspector General have the resources necessary to audit major department contracts. To ensure that the OIG has the resources to do so, consideration should be given to setting aside a small percentage of each increase in the annual DHS budget to fund such OIG oversight.

Thank you, again, for your invitation, and I look forward to answering your questions.

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